IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl. MC.No. 5344 of 2003()

CC.243/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: ACCUSED NOS.1 TO 6:

1. SIVARAJAN,
   ADDITIONAL SUB INSPECTOR OF POLICE,
   ADOOR, PATHANAMTHITTA DISTRICT.

2. SHAJI,
   HEAD CONSTABLE, ADOOR POLICE STATION,
   PATHANAMTHITTA DISTRICT.

3. SOMARAJAN,
   HEAD CONSTABLE, ADOOR POLICE STATION,
   PATHANAMTHITTA DISTRICT.

4. SHAMSUDHEEN,
   HEAD CONSTABLE, ADOOR POLICE STATION,
   PATHANAMTHITTA DISTRICT.

5. JAMES,
   POLICE CONSTABLE, ADOOR POLICE STATION,
   PATHANAMTHITTA DISTRICT.

6. REGHUNATHAN,
   POLICE CONSTABLE, ADOOR POLICE STATION,
   PATHANAMTHITTA DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANTS:

1. A. ANSARI, S/O. ALIYARKANNU RAUTHER,
   SHIJIN NIVAS, PARAKKODE AMSOM, ADOOR DESOM,
   ADOOR TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.SHANAVAS KHAN
SRI. THOMAS JOHN AMBOOKEN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 5344 OF 2003

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Dated this the 17th day of January 2007

O R D E R

The petitioners, who are Additional Sub Inspector of Police, Head Constables and Constables against whom the proceedings have been initiated before Judicial First Class Magistrate, Adoor vide C.C. 243/2001 under sections 323, 324, 294(b), 506 (ii) r/w section 34 of the Indian Penal Code, have sought for getting the above quashed on the ground that the required sanction under section 197 (1) has not been obtained before initiation of the proceedings. It is pointed out that the allegation is that the complainant was manhandled by the petitioners from inside the police station. The contention is that the complainant is the 2nd accused in C.C. No. 677/98/Crime No. 313/98 of Adoor Police Station on the allegation that the complainant and others attacked one Asokan, a merchant while he was standing in front of the shop of another person. According to the petitioners, the incident gave rise to a communal tension in the area and the police had only taken prompt action failing which the matter

would have flared up. The complainant who was the accused was arrested and produced on the next day before the Judicial Magistrate of First Class before whom he had no complaint of ill treatment. The petitioner has produced the copy of the remand report. It is further pointed out that the court below has not properly considered the circumstances of the case and that no witnesses were examined. It is further pointed out that there is a delay of about more than 3 months in submitting the complaint. The petitioner has also produced final report in Crime No. 313/98 i.e., Annexure A4 from which it can see that the allegation is that the complainant who is mentioned as A2 has manhandled the defacto complainant therein and attacked him with an iron block etc.

2. The contention of the counsel for the respondent/ complainant is that in view of the decision of this court in **Sarojini v. Prasannan** (1996 (2) KLT 859) A.S.I and Police Constables are not covered by section 197(1). I find that just controverse is the position, this court has held the notification issued under sub section 3 of section 197 covered the entire police force charged with maintenance of public order.

3. The counsel for the petitioner has pointed out that the decision of the Supreme Court in **Rakesh Kumar v. State of Bihar** (2006 (2) KLT 26) as per which the court has held that once any act or omission has been found to have committed by a public servant in discharge of his duties then it must be given liberal and wide construction so far its official nature is concerned. It was also held that the operation of the section has to be limited to those duties which are discharged in the course of official duty. It is submitted that in the medical certificate has produced in support of the private complaint filed, what has been noted is that there is complaint of pain.

4. I find in the light of the ratio of the decision of the Supreme Court in **Rakesh Kumar's** case (op. cit) that the complaint ought to have obtained sanction as contemplated under section 197(1) Cr.P.C. It appears that the manhandled alleged if any was done in consequence of the discharge of official duty as from the criminal case records in Crime Nos. 313/98 produced it is seen that the respondent is involved in a serious crime and was arrested and produced before the court. It is during the course of custody that the torture is alleged.

5. In the circumstances, the Crl. M.C is allowed and the proceedings pending as C.C. No. 243/01 in the court of Judicial Magistrate of First Class, Adoor is herewith quashed. The complainant will be at liberty to proceed afresh if permissible as per law.

K.R. UDAYABHANU, JUDGE.

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